IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 9810 of 2007(P)

PETITIONER:

---

1. KOIVILA RAMACHANDRAN, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT BAIMI NIVAS,
   NJARAKKAL, PERINADU P.O., KOLLAM DIST.

2. V.OMANAKUTTAN PILLAI, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT THEKKEDATH
   KIZHAKKETHIL, NJARAKKAL, PERINADU P.O.,
   KOLLAM DIST.

3. G.VIJAYACHANDRAN NAIR, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT AMPALAMPURATH,
   KAMUKAMCHERI P.O., THALAVOOR, KOLLAM DISTRICT.

4. KARUVALLI SASI, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT KARUVALLIL VEEDU,
   THOTTUVA, WEST KALLADA P.O., KOLLAM DISTRICT.

5. K.JOHNSON, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT MULLAVILA VEEDU,
   PUTHOOR P.O., KOLLAM DISTRICT.

6. CHITHARA MADHU, MEMBER,
   BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
   BANK LTD., KOLLAM, RESIDING AT SANKARA VILASAM,
   CHITHARA P.O., KOLLAM DISTRICT.

7. THODIYOOR RAMACHANDRAN, MEMBER,
BOARD OF DIRECTORS, THE KOLLAM DISTRICT CO-OP.
BANK LTD., KOLLAM, RESIDING AT 'MYTHREE',
THODIYOOR NORTH P.O., KOLLAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS:
---

1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

2. PART-TIME ADMINISTRATOR,
KOLLAM DISTRICT CO-OPERATIVE BANK LTD., KOLLAM.

3. THE PRESIDENT,
KOLLAM DISTRICT CO-OPERATIVE BANK LTD., KOLLAM.

4. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, DEPARTMENT OF
CO-OPERATION, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.A.G.ANEETHA
SRI.P.N.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007 ALONG WITH WPC NO. 10100 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.9810/07

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF ORDER NO.CB(3) 29325/2006 DTD. 7-3-2007 ISSUED BY R1.

EXT.P2 TRUE COPY OF THE COMMUNICATION DTD. 19-3-2007 FROM THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KOLLAM TO R1.

FIRST RESPONDENT'S EXHIBITS

EXT.R1(A) TRUE COPY OF THE COMMUNICATION BY THE PRESIDENT DTD. 7-3-07

EXT.R1(B) TRUE COPY OF THE REPORT OF THE PRESS CONFERENCE CONVENED BY THE PETITIONERS

SECOND RESPONDENT'S EXHIBITS

EXT.R2(A) TRUE COPY OF THE ENQUIRY REPORT SUBMITTED ON 11-12-2006

EXT.R2(B) TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY REGISTRAR DTD. 22-2-07

EXT.R2(C) TRUE COPY OF THE NEWS ITEM PUBLISHED IN MATHRUBHUMI DAILY DTD.17-3-07

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

\- -

W.P.(C).NOs.9810 & 10100 OF 2007

\- -

Dated this the 18th day of July, 2007

JUDGMENT

These writ petitions being connected are disposed of through this common judgment.

Petitioners in W.P.(C)No.9810/07 are members of the Board of Directors of Kollam District Co-operative Bank. They have approached this court challenging Ext.P1 and seek a direction to put them back as the members of the Board of Directors in the place of part time Administrator- the second respondent. The very same order is produced as Ext.P8 in the other writ petition challenged by the petitioner therein who is none other than the President of the Kollam District Co-operative Bank.

2. I heard learned counsel for the petitioners in W.P.(C)No.9810/07 Sri.K.Ramkumar, learned counsel for the petitioner in W.P.(C)No.10100/07 Sri.P.B.Suresh Kumar and the Special Government Pleader Smt.A.G.Aneetha also.

3. The impugned order in both the cases is an order passed under Section 32 of the Co-operative Societies Act to supersede the Kollam District Co-operative Bank. Towards this, it is the admitted case that a notice was issued dated 22/02/2007. That is received on 27/03/2007. The President (petitioner in W.P.(C)No.10100/07) was given ten days time to file his objections. It is the common case that he had applied for extension of time to submit his objections and time was granted upto 14/03/2007. The hearing was posted as per the notice on 15/03/2007. The impugned order of supersession came to be passed on 17/03/2007.

4. Sri.K.Ramkumar, learned counsel appearing on behalf of the members of the Board of Directors would contend as follows:

The impugned order is unsustainable for the reason that no notice was served on the petitioners in his writ petition. He would submit that there is serious differences of opinion between his clients and the petitioner in the other case and they were kept in dark and they could not devise their objections to the notice proposing supersession. In the circumstances such as this, it is not sufficient to serve copy of the

notice on the President alone and it should be served on all the members of the Committee, he contends. He would distinguish the ruling of this court in **Raghavan v. Joint Registrar (**1996(2)KLT 671) wherein the Division Bench of this court held that there is no provision to give separate notice to each member of the Board of Directors and notice need be given only to the Committee. This court in the said case held as follows:

> " On going by the section there is no provision to give separate notice to each member of the Board of Directors. Notice is to be given to the committee and it is the committee which has to raise its objections, if any, against the proposed supersession. Admittedly, notice was issued to the President of the Committee. It is important to note that the petitioner has no case that the President is acting against the interest of either the petitioner or other members of the Society. Normally, the President will bring it to the notice of the other members of the committee that he had received a notice from the first respondent under S.32(1) of the Act and it is for the Committee to give suitable reply or objections to the proposed supersession. Learned counsel for the appellant further contended that if any supersession order is passed pursuant to S.32(1) notice, the persons, who are members of the superseded Board of Directors, are entitled to re-elect as

> members of the Board of Directors for a period of one year as per R.44(k) of the Kerala Co-operative Societies Rules, 1969. It is contended that if any supersession order is passed, it would visit the petitioner with civil consequences and, therefore, he is entitled to get notice. Of course, petitioner has a right to get notice. But as he is a member of the Committee, the notice will be received through the President of the Committee. So long as there is no individual right of notice under S.32(1) of the Act, it cannot be said that the petitioner should not be issued with separate notice."

He would submit that supersession has a very serious consequence on the members of the committee as the members of the Committee who are superseded will stand disqualified from becoming members of the committee for one year and therefore it is a matter where principles of natural justice require that each member of the committee be put on notice. He would distinguish the decision of the Division Bench and point out that the circumstances in the present case was not a situation which fell for decision in the said case. This is a case where the President is at loggerheads with the other members of the committee and he has not taken them into confidence in devising the reply and great injustice is caused, he contends.

5. Learned Government Pleader on the other hand submits that the Division Bench should govern the matter in this case also. I would notice that from the reply given by the President in the other case that the President has purported to give the reply on behalf of the Society. That apart, the President belongs to a political party which is in coalition with the parties to which the petitioners in W.P.(C) No.10100/07 belong. In this scenario, I find it difficult to accept the case that the order has to be quashed on the ground that notice was not served on the members of the Committee. I find that a detailed objection is filed by the President and I do not think that any case is made out for departing from the principle enunciated by the Division Bench that individual notice to the members of the committee is unnecessary and notice need be served to the President on behalf of the Committee which has admittedly been done in this case.

6. The further contentions taken are that the impugned order is bad as it is passed without consultation as mandated in Section 32 of the Co-operative Societies Act with the Circle Co-operative Union and State Co-operative Bank. It is the further case that even if all the

allegations are said to have been proved section 32 is not attracted. At any rate if as most of the allegations are such that section 32 is not attracted, Sri.P.B.Suresh Kumar would contend that even if there are allegations which attract section 32, the order would be bad as it would not be possible to find out justification on which the order was passed. He would also contend that there is a case that there is violation of principles of natural justice in the matter of affording an opportunity of hearing to the petitioner in his case. This is on the following allegations. Notice dated 22/02/2007 was served on the petitioner on 27/03/2007. As he had to collect documents in support of his explanation, petitioner sought time till 14/03/2007, which was allowed. On 14/03/2007 under acknowledgment, the petitioner submitted Ext.P7 representation seeking time to address his oral arguments till 25/03/2007. It is his case that it was received and he was assured that a decision will be taken and communicated to him which was the reason why the petitioner was not even present on 15/03/2007 for personal hearing. A matter of this nature involving very serious consequences. Evidently the matter came to be taken up and an order

was passed on 17/03/2007 without affording an opportunity of hearing to the petitioner , he contends. He would submit that this case can be decided on the issue of failure to consult as required in law. In this context he relies on the decision of the Division Bench in **Sahadevan v. Padmanabhan** (2004(1)KLT 192), wherein this court held as follows:

> " Sub-s(2) of S.32 provides that the Registrar shall consult the Financing Bank and the Circle Co-operative Union or the State Co-operative Union as the case amy be before passing an order under sub-s(1) of S.32. it is seen from Ext.P6 that a copy of the notice dated 24-09-2003 issued under sub-s(1) of S.32 of the Act was sent to the General Manager, Palakkad District Co-operative Bank (Financing Bank) and the Secretary, Co-operative Union, Palakkad. Apart from sending a copy of the notice, no further request or direction was made. Ext.P8 order of the Joint Registrar shows that the views of the financing bank and the Circle Co-operative Union were not received on time and therefore, the Joint Registrar proceeded on the assumption that they had nothing to say in the matter. Learned Single Judge, relying on the decisions in Jose Kuttiyani v. Registrar, Co-operative Societies (AIR 1982 Ker.12) and Elakkal Service Co-

operative Bank v. State of Kerala (1997(2)KLT 85) held that the mere sending of a copy of the show cause notice to the consultees would not satisfy the requirement of the provisions contained in sub-s(2) of S.32 of the Act. According to the learned Single Judge, the notice, the reply and the tentative findings of the Joint Registrar should be forwarded to the consultees so that they can form an opinion and inform the same to the Joint Registrar. The learned Single judge has also pointed out that the impugned order, Ext.P8 does not show that any such consultation was made. There is no case for the appellant that, apart from sending a copy of Ext.P6 notice to the Financing Bank and the Circle Co-operative Union, the Joint Registrar had forwarded to them the explanations/objections given on behalf of the Committee and the tentative findings arrived at by the Joint Registrar after considering the explanations/objections of the Committee. Therefore, we have to proceed on the basis that, apart from sending a copy of Ext.P6 to the Financing Bank and the Circle Co-operative Union, no further action was taken by the Joint Registrar as part of the consultation process contemplated under sub-s(2)of S.32 of the Act. The consultation contemplated under sub-s(2)of S.32 of the Act can be effective and meaningful only if the show cause notice issued under S.3291), the

> explanations/objections given by the Committee to such how cause notice and the tentative findings arrived at by the Joint Registrar after considering such explanations/objections are also forwarded to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the proposal to supersede the Committee. Such a consultation process has not taken place in this case. Therefore, the provisions of sub-s(2) of S.32 of the Act have been violated. Hence, Ext.P8 order was liable to be set aside on the second ground mentioned by the learned Single Judge."

8. He would point out that it is indisputable that neither the reply of the petitioner nor the tentative finding of the Registrar were forwarded to the consultees and on this short ground it is clear that no consultation as required was done and therefore the order is bad. The State Co-operative Bank has infact not chosen to sent its reply. The State Co-operative Union has replied to the effect that proceeding may be done in accordance with law, but it is the admitted case that this is only on the basis of the show cause alone being made available to the State Co-operative Union and the State Co-operative Bank. He would further contend that it cannot stand scrutiny of this court on this short

ground alone. He would further contend that he need not go to make good all the other contentions.

9. On the other hand, Special Government Pleader would point out that the allegations are very serious. An emergent situation arose as is revealed from the perusal of Ext.P8 order warranting action under Section 32, she contends. She would submit on the admitted facts that mere failure to forward the copy of the objection or the tentative findings will not be fatal and this court may not quash an order which is otherwise valid only on the ground which is technical. She would point out that the allegations levelled in the notice are very serious involving very grave irregularities and the financial health of the bank is poor and so also there is allegation of lack of probity in the running of the Bank and action under Section 32 was fully justified. She would submit that when a plea of this nature is advanced before court, it should not be accepted without anything more and the court should also consider the other relevant aspects and consider whether by allowing the writ petition on such a ground an order which is illegal will revive. In this connection she relies on the decision of this court in

R.Thulaseedharan and another v. State of Kerala and others (AIR 95 Kerala 202). That is a case where action was taken under Section 33. Learned Single Judge held as follows:

> "Exercise of extraordinary power of High Court under Art.226 of the Constitution is discretionary. Such extraordinary power need not be invoked to quash every illegal order or act of public authority nor should it be exercised in every case. Court has to consider if it would be just to interfere in exercising this extraordinary jurisdiction. In the instant case Registrar of Co-operative societies extended the term of Administrator from beyond one year under Section 33 of Kerala Co-operative Societies Act to look after the affairs of Kalamachal Handloom Weavers' Co-operative Society Limited since its executive had been superseded. The ousted committee sought for removal of administrator. Held, on the one hand removal of Administrator would leave the society with one to look after its affairs and on the other non-removal would tantamount to tolerating ultra vires act of Registrar in extending terms of Administrator and as such petition under Art.226 is not maintainable since instead of aiding the cause of justice it would result in chaos and disorder dislocating the working of the society.

10. She would further contend that it cannot be held that

Division Bench in 2004 (1)KLT 192 has established consultation as a mandatory requirement. In this context, she invited my attention to **Jose Kuttiyani and others v. The Registrar of Co-operative Societies,** Kerala (AIR 1982 Kerala 12), wherein this court has held that consultation requires sending of copy of the relevant papers. She would point out that, that was a case where State Co-operative Union sought time and time was not granted and they did not express anything on notice. In para 22 the court held as follows.

> " The nature of the consultation the Registrar had with the Apex Bank and the State Co-operative Union has already been referred to. The show cause notice was sent to them for remarks only. The extension of time asked for by the State Co-operative Union was not granted and so they did not express anything on the notice. When the Apex Bank asked for time to look into the reply that may be filed by the petitioners, it was informed that it is not necessary. What opinion the Apex bank can give on seeing the mere allegations in Ext.P3 is not clear. In order that there may be a legal consultation the allegations, the objections the full materials in support of the allegations and the tentative conclusion of the Registrar should be followed to have a meaningful consultation".

11. Para 24 of the said judgment is highly pertinent. It is extracted hereunder:

> " On the facts of this case and in the light of the above decisions we hold that there has not been a consultation as required by law. The Registrar never consulted the financing Bank after considering the explanation and forming a prima facie conclusion on the mater. So the order of supersession is invalid.

12. Government Pleader also referred to the decision of the Apex Court in **State of Patiala and others v. K.Sharma** (AIR 1996 Supreme Court 1669) and also in **Managing Director,Ecil, Hyderabad and others v. B.Karunakar and others** (1993 (4) SCC 727) for the proposition in the matter of deviation from the procedure, mere breach without prejudice is insufficient to warrant interference. I would think that the question involved in the said case and the legal questions raised in these writ petitions cannot be treated as so similar as to warrant the importing of the said dictum in the facts of this case.

It is to be noted that it is the common case that the State Co-operative Bank has not given any reply. The State Co-operative Union has opined to take a decision in accordance with law. This was done

without making available either the explanation of the petitioner or the tentative conclusion of the Registrar.

14. Of course, learned Government Pleader Smt.Aneetha would point out that consultation can be waived in appropriate case of emergency and in fact action can be taken even without issuing notice and that this would show that it is not mandatory. This argument is echoed by Sri.P.N.Mohanan, learned counsel for the Administrator who points out that there is no decision holding that consultation is mandatory. The Government Pleader would point out that even if there is consultation, the Registrar is the authority to be satisfied and merely because they expressed any view, it is the ultimate view of the Registrar which is matters. So it will not advance the case of the petitioner to contend that consultation was not done as provided in the Division Bench rulings. Government Pleader also relies on the decision reported in **Koya v. State of Kerala** (1992 (2)KLT 194).

15. I find myself unable to subscribe the contentions of the respondents. This is not a case where Government has a case that proceedings have to be taken without resorting to consultation or

without notice. Admittedly, notice was issued and time was given to file objections. Attempt was made at consultation also. Therefore, once it is decided by the Registrar that consultation is to be done, then consultation has to be done in the manner provided as per the law declared by this court. It is thereafter not open to say that a situation arose and they can be half- hearted in the matter of consultation. In other words, they have purported to comply with the consultation to the extent of making available the notice to the Co-operative Bank and the Union. I do not think that it should be open to the respondents to contend that there ends the process of consultation. Apparently consultation with the bodies have been mandated by the legislature in a attempt for getting views of the appropriate authorities before supersession is resorted to which is beyond doubt is a very harsh step.

16. Having regard to the ramifications that flow from the same, it is a valuable safeguard atleast in circumstances where Registrar himself thinks that consultation is possible as in the facts of this case. Making available the reply of the party and consultation of those persons whose opinions are to be consulted, in my view, is a large part

of the process of consultation which is for the reason that with the notice and reply, the persons who have to be consulted will be in a position to properly apply their minds and to offer their opinion in the matter. Consultation is not intended to be a mere show or an empty formality. In such circumstances, I feel that without going into other contentions raised by the petitioners, petitioners are entitled to succeed on the ground only that there is no consultation in so far as admitted copies of the explanation given by the petitioner in W.P.(C)No.10100/07 and the tentative conclusions were not available either to the Co-operative Bank or the State Co-operative Union. When the law is declared by this court and that too in two Division Bench judgments regarding the need for consultation I would think that it will not be open to the Officers to act contrary to the law declared by the Division Bench. This tendency to over look the dictum laid down by this court cannot be encouraged.

As regards the contention of the petitioner in W.P.(C) No.10100/07 that he is denied natural justice, I am not inclined to accept the same. It is to be noticed that it is not a case where the

petitioner was not given notice. It is a case where petitioner sought time to file written statement which time in fact expired on 08/03/2007. On his request time was granted to file his statement upto 14/03/2007. He knew that the hearing was to take place on 15/03/2007. Of course, he has given Ext.P7 seeking granting of time to address his oral arguments till 25/03/2007. These allegations are not specifically denied. Of course, Registrar has referred to this and reasoned that ample time was granted to defend. Even though petitioner has stated that it is because of the assurance given that a decision will be taken on Ext.P7 and communicated to him that he did not go even on 15/03/2007, I find it difficult to accept such a contention. This is for the reason that I find in a matter of this nature, petitioner would have gone on 15/03/2007 atleast to ascertain as to what is the fate of his representation and whether hearing would take place on 15/03/2007. It is to be noted that he has filed a detailed objections and therefore in the facts it cannot be said that denial of time to make his oral argument should result in the order being bad.

I am compelled to find that the impugned order - Ext.P1 in W.P.

(C)No.9810/07 and Ext.P8 in W.P.(C)No.10100/07 are liable to be quashed. Accordingly, Ext.P1 in W.P.(C)No.9810/07 and Ext.P8 in W.P.(C)No.10100/07 is quashed. However I make it clear that it will not stand in the way of the Registrar passing fresh orders in accordance with law. Before passing fresh order, he has necessarily to forward the reply given by the petitioner in W.P.(C)No.10100/07 and the tentative findings of the Registrar to the State Co-operative Bank and State Co-operative Union for seeking their view on the proposal to supersede. I make it clear that I have not dealt with the merits of the matter canvassed.

(K.M.JOSEPH, JUDGE)

sv.